

TRANSMISSION INFRASTRUCTURE PLANNING ACT

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Senate Bill 103 (S-2) as reported from committee

Sponsor: Sen. Wayne A. Schmidt

House Committee: Energy

Senate Committee: Energy and Technology

Complete to 11-30-21

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 125 of 2021)

SUMMARY:

Senate Bill 103 would create a new act, the Transmission Infrastructure Planning Act, which among other things would do all of the following:

- Facilitate the construction and operation of regionally cost-shared transmission lines.
- Establish cost accountability requirements for an incumbent electric transmission company or companies intending to construct, own, operate, maintain, and control a regionally cost-sharing transmission line.
- Provide that the new act does not alter or limit the right of a person to construct, own, operate, maintain, or control an electric transmission line that is not a regionally cost-shared transmission line.
- Specify other limits on the scope and effect of the act.
- Provide that the new act will control in any conflicts with other state laws.

Regionally cost-shared transmission lines

Under the bill, an *incumbent electric transmission company* would have the right to construct, own, operate, maintain, and control a *regionally cost-shared transmission line* if both of the following apply:

- The line or its construction was included in a plan adopted or otherwise approved by a *recognized electric planning authority* for the company.
- The line will interconnect to facilities currently owned, or that will be owned, by that company.

Two or more incumbent electric transmission companies also could construct, own, operate, maintain, and control a regionally cost-shared transmission line that would interconnect to facilities owned by the different companies. The line would belong individually and equally to each company, unless otherwise agreed to in writing by each of those companies.

Incumbent electric transmission company would mean an *electric utility, affiliated transmission company, or independent transmission company* that owns a *high-voltage transmission line* in Michigan on or after the bill's effective date.

Regionally cost-shared transmission line would mean a high-voltage transmission line that is eligible for regional cost sharing and is not subject to a right of first refusal in accordance with the tariff of a recognized electric planning authority.

High-voltage transmission line would mean a line used to transmit electricity and all associated structures, equipment, facilities, and other personal property necessary to transfer electricity over the line at a system bulk supply voltage of 100 kilovolts or more.

Recognized electric planning authority would mean a person recognized by the Federal Energy Regulatory Commission (FERC) or the North American Electric Reliability Corporation as authorized under federal law to approve a high-voltage transmission line for construction by an incumbent electric transmission company, including, but not limited to, a ***regional transmission organization***.

Regional transmission organization would mean a person that meets certain requirements for regional transmission organizations under federal regulations¹ and is recognized by FERC as the organization with oversight responsibility for a region that includes the service territory of an incumbent electric transmission company.

Electric utility would mean any of the following:

- An electric utility as defined in 1939 PA 3.
- A municipal electric utility system as defined in the Michigan Energy Employment Act.
- A ***cooperative electric utility***.
- A ***joint agency*** acting on its own behalf or on behalf of one or more of its member municipal electric utility systems.

Cooperative electric utility would mean either an electric cooperative organized as a cooperative corporation under 1931 PA 327 or a cooperative corporation in the business of generating or transmitting electricity.

Affiliated transmission company and ***independent transmission company*** would mean those terms as defined in the Electric Transmission Line Certification Act.

Joint agency would mean that term as defined in the Michigan Energy Employment Act.

Cost accountability

The following provisions would apply to an incumbent electric transmission company (or companies if more than one owner) that has the right to construct, own, operate, maintain, and control a regionally cost-shared transmission line in accordance with the new act:

- A company or companies owning a connecting electric transmission facility would have to give the Michigan Public Service Commission (MPSC) written notice of intent regarding construction of the regionally cost-shared transmission line within 90 days after approval of the line by the recognized electric planning authority.
- Not later than 180 days after approval of the line by the recognized electric planning authority, the company or companies would have to do both of the following:
 - Hold a meeting with the MPSC to provide detailed information and to answer any questions about the regionally cost-shared transmission line.
 - Provide a report to the MPSC that includes an estimate of the cost to construct the line and documentation that the cost for the line is the result of competitively bid engineering, procurement, and construction contracts.

¹ 18 CFR 35.34(j), (k), and (l): <https://www.ecfr.gov/current/title-18/section-35.34>

- Until construction is complete, the company or companies would have to provide a quarterly report to the MPSC that includes an updated estimate of the construction costs and an explanation of changes in the cost estimate from the previous one.
- If the MPSC files a complaint at the FERC to challenge the costs incurred by the company to construct the line, the company or companies would have to reimburse the MPSC 100% of its litigation costs, up to \$250,000, if the MPSC's complaint is granted, or 25% of its litigation costs, up to \$250,000, if the MPSC's complaint is denied.

Scope and effect

The bill states that it would not do any of the following:

- Confer the power of eminent domain.
- Modify the rights of property owners under the Uniform Condemnation Procedures Act.
- Modify the authority of the MPSC.
- Modify the requirements, rights, and obligations of an incumbent electric transmission company under the Electric Transmission Line Certification Act.
- Modify or supersede the requirements, rights, and obligations of an affiliated transmission company, independent transmission company, or electric utility under any contract to which it is a party, including any service agreement or other contract subject to the jurisdiction of the FERC, if the contract relates to service over facilities owned or operated, or to be owned or operated, by that entity.
- Modify or supersede the authority, if any, of the FERC or the MPSC to determine the proper classification of transmission and local distribution facilities for any purposes, including assignment of jurisdiction and approval of cost-recovery.
- Grant an independent transmission company or affiliated transmission company the right or the authority to distribute electricity or serve Michigan retail electric customers.
- Modify the exclusive authority of electric utilities to own, construct, and operate local distribution facilities.
- Modify or supersede the authority of a municipal electric utility or joint agency to own, construct, and operate transmission lines under any other law of the state.

In addition, the bill states that its provisions would not alter or limit the right of a person to construct, own, operate, maintain, or control an electric transmission line in Michigan that is *not* a regionally cost-shared transmission line.

The bill's provisions would control in any conflict between the bill and any other law of the state.

FISCAL IMPACT:

Senate Bill 103 would have an indeterminate fiscal impact on the Michigan Public Service Commission, housed within the Department of Licensing and Regulatory Affairs. In the event that the MPSC files a complaint with the FERC (which would result in costs for the MPSC) related to activities under the bill, the incumbent electric transmission company would be required to reimburse the MPSC's litigation costs, as discussed in the legislative analysis. The net impact of these changes would depend on litigation costs and the approval or denial of a filed complaint, both of which are indeterminate.

POSITIONS:

Representatives of ITC testified in support of the bill. (11-3-21)

The following entities indicated support for the bill:

- American Transmission Company (11-3-21)
- Blair Township (11-3-21)
- City of Novi (11-3-21)
- City of Wayland (11-3-21)
- Dow Chemical Company (11-10-21)
- General Motors (11-10-21)
- IBEW Local 17 (11-3-21)
- IBEW Local 223 (11-3-21)
- IBEW Local 876 (11-3-21)
- Johnson Controls (11-3-21)
- Kinexus (11-3-21)
- Lakeshore Advantage (11-3-21)
- Market Van Buren (11-3-21)
- Michigan Chamber of Commerce (11-3-21)
- Michigan Forest Products Council (11-3-21)
- Utility Line Contractors (11-3-21)
- Xcel Energy (11-3-21)

Representatives of the following entities testified in opposition to the bill (11-3-21):

- LS Power
- Mackinac Center for Public Policy
- Michigan Chemistry Council
- R Street Institute
- Resale Power Group of Iowa

Securing America's Energy Future indicated opposition to the bill. (11-3-21)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Marcus Coffin

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.